

1 ANNETTE D. KIRKHAM (STATE BAR NO. 217958)  
anettek@lawfoundation.org  
2 MONA M. MOTWANI (STATE BAR NO. 239677)  
monam@lawfoundation.org  
3 LAW FOUNDATION OF SILICON VALLEY  
111 West Saint John Street, #315  
4 San Jose, CA 95113  
Telephone: (408) 293-4790  
5 Facsimile: (408) 293-0106

6 Attorneys for Plaintiff  
JUAN CUEVAS

ADR

8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10 SAN JOSE DIVISION

11  
12 JUAN CUEVAS,

13 Plaintiff,

14 v.

15 ALTAS REALTY/FINANCIAL SERVICES,  
INCORPORATED, a California corporation,  
16 dba ATLAS REALTY, dba ATLAS  
FINANCIAL SERVICES, ALVIN CLAIR  
17 SILBERNAGEL, SAMANTHA TREVINO,  
WORLD SAVINGS, INC, dba WORLD  
18 SAVINGS BANK, FSB, and DOES 1 to 100,

19 Defendants.

C07 02814 JF

Case No. \_\_\_\_\_

COMPLAINT FOR MONETARY,  
INJUNCTIVE, AND DECLARATORY  
RELIEF; DEMAND FOR JURY  
TRIAL

1 Plaintiff Juan Cuevas (hereinafter "Plaintiff" or "Mr. Cuevas") alleges as follows:

2 **THE PARTIES**

3 1. Mr. Cuevas is an individual that currently resides in San Jose, County of  
4 Santa Clara, California.

5 2. Defendant Atlas Realty/Financial Services Incorporated, dba Atlas Realty and  
6 Atlas Financial Services (hereinafter "Atlas") is a corporation organized and existing under the  
7 laws of the State of California. On information and belief, Atlas' principal place of business is in  
8 the State of California, located at 2020 S. Bascom Avenue, Suite C, in Campbell, California. On  
9 information and belief, at all relevant times throughout this complaint, Defendant Atlas held itself  
10 out to be a "full service" mortgage broker not affiliated with any one mortgage lender.

11 3. Defendant Alvin Clair Silbernagel ("Silbernagel") is an individual residing in  
12 the State of California and a real estate broker licensed by the State of California. On information  
13 and belief, Silbernagel is the licensed designated officer/broker for Defendant Atlas.

14 4. Defendant Samantha Trevino (hereinafter "Trevino") is an individual residing  
15 in the State of California. On information and belief, Trevino is a loan officer and licensed  
16 salesperson for Defendant Atlas.

17 5. Defendant World Savings, Inc., dba World Savings Bank, FSB (hereinafter  
18 "World Savings Bank") is a corporation organized and existing under the laws of the State of  
19 California. On information and belief, World Savings Bank regularly does business in Santa  
20 Clara County, and its principal place of business is 1901 Harrison Street, in Oakland, California.  
21 On information and belief, Defendant World Savings Bank was engaged in the business as a  
22 creditor who regularly engaged in the making of mortgage loans, payable by agreement in  
23 installments or for which the payment of a finance charge is or may be required, whether in  
24 connection with loans, sales of property or services, or otherwise.

25 6. Mr. Cuevas has yet to establish the true identities of Defendants sued herein  
26 as Does 1 through 100, inclusive, and therefore sues those Defendants by fictitious names.  
27 Plaintiff will amend this complaint to allege their true identities as they become known. Plaintiff  
28 alleges on information and belief that each of the fictitiously named Defendants is liable to

1 Plaintiff in some manner for the matters alleged herein.

2 7. On information and belief, at all times relevant herein, each of the Defendants  
3 was the agent, servant and/or employee of each other defendant. On information and belief, each  
4 Defendant was acting within the course and scope of such agency or employment in doing the  
5 things alleged.

#### 6 JURISDICTION

7 8. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331  
8 because Plaintiff has alleged causes of action for violations of the Federal Truth in Lending Act,  
9 pursuant to 15 U.S.C. § 1601 *et seq.* and violations of the Federal Real Estate Settlement  
10 Procedures Act, 12 U.S.C. § 2601 *et seq.*

11 9. This Court has subject matter jurisdiction over the state law claims alleged  
12 herein pursuant to 28 U.S.C. § 1367.

#### 13 VENUE

14 10. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) and (c)  
15 because the Defendants committed each of the wrongful acts alleged herein within this judicial  
16 district and reside in this judicial district.

#### 17 STATEMENT OF THE CASE

18 11. Defendants have acted in concert to defraud Mr. Cuevas, a fifty-nine year-old  
19 Spanish speaking man of Mexican heritage, of his greatest single asset – his home. Defendants,  
20 acting through Defendant Trevino, executed a classic “bait and switch” routine by promising one  
21 thing during their discussions, which occurred in Spanish, then taking advantage of his limited  
22 ability to read and write English and having him sign documents written in English that did not  
23 reflect the terms and conditions promised by Defendants. Defendant Trevino, representing  
24 herself to be Mr. Cuevas' mortgage broker and agent, manipulated Mr. Cuevas' trust by pressuring  
25 him to enter a “transaction” arranged by the Defendants. The true terms of this transaction were  
26 misrepresented to Mr. Cuevas prior to closing. Defendants' transaction was not a fair bargained-  
27 for deal, but rather included inappropriate fees and kickbacks to the various Defendants and  
28 unfair financing terms designed to deprive him of his home of more than 15 years.

1           12. Furthermore, on the day Mr. Cuevas signed the closing documents regarding  
2 the aforementioned transaction, Defendants failed to provide Mr. Cuevas with a signed copy of  
3 the document notifying him of his right to rescind the transaction. To make matters worse,  
4 Defendants then made handwritten changes to the document Mr. Cuevas did sign (which, again,  
5 he was never given a copy of), and then *forged* Mr. Cuevas' initials on the document to make it  
6 appear as though Mr. Cuevas had received the proper statutory notice of his rescission rights.

7           13. Mr. Cuevas is now forced to file the instant action to avoid losing his home  
8 and recover damages caused by the blatantly fraudulent conduct and statutory violations engaged  
9 in by Defendants.

#### 10                                   STATEMENT OF FACTS

11           14. Mr. Cuevas is a fifty-nine year-old man and resides at a home located at 672  
12 Swallow Drive, San Jose, California 95111. Mr. Cuevas purchased his home in 1991.

13           15. Mr. Cuevas was born and raised in Mexico; he speaks, reads, and writes  
14 almost no English.

15           16. Mr. Cuevas first spoke to Defendant Trevino in February of 2006. On  
16 information and belief, Defendant Trevino was acting on behalf and at the behest of all of the  
17 Defendants. All discussions between Defendant Trevino and Mr. Cuevas were in Spanish.

18           17. During their discussions, Mr. Cuevas informed Defendant Trevino that he and  
19 his wife made a total of \$3200 per month, their existing mortgage payment was \$2755 per month,  
20 and they were really struggling to make the payments and he wanted to see if he could refinance  
21 and get a lower monthly payment. Mr. Cuevas' existing loan on the property was for \$373,000.

22           18. Defendant Trevino responded by saying not only could she lower his  
23 payment, but she could also get him some extra cash out of the house. Defendant Trevino asked  
24 Mr. Cuevas how an extra \$40,000 sounded to him.

25           19. Mr. Cuevas was skeptical that Defendant Trevino could do so, and made it  
26 clear he did not need to get any additional money, that he was interested in lowering his monthly  
27 payment because he was having trouble making the existing payments, that he did not want the  
28 rate to go up and down, and that he wanted taxes and insurance to be included in his payments.

1           20. In order to lure Mr. Cuevas into a refinancing through Defendants, Defendant  
2 Trevino made at least the following representations:

- 3           a. that she would obtain the best available loan for Mr. Cuevas;  
4           b. that she would obtain a loan that was affordable for Mr. Cuevas;  
5           c. that he could take out an additional \$40,000 and the payments would still  
6 only be \$1600 per month, \$1800 per month if he wanted taxes and insurance included;  
7           d. that the interest rate would only go up once every year, and that the  
8 payment would only go up by \$100 for each of the first 5 years; and  
9           e. that the payments were interest only, and that Mr. Cuevas could send extra  
10 money each month that would go directly towards the principal amount.

11           21. Mr. Cuevas relied on these representations and agreed to be represented by  
12 Defendants Trevino, Silbernagel and Atlas, reasonably believing them to be honest brokers acting  
13 on his behalf.

14           22. Despite reassurances to Mr. Cuevas that Defendants would find the best  
15 refinancing deal possible for Mr. Cuevas, Defendant Trevino steered him directly to the  
16 remaining Defendants. On Defendant Trevino's urging, Mr. Cuevas submitted an application to  
17 refinance his home with the Defendants.

18           23. In May 2006, Defendant Trevino advised Mr. Cuevas that he qualified for a  
19 loan and that the loan papers were ready to be signed. Defendant Trevino also reiterated her  
20 earlier representations that Mr. Cuevas would be getting an additional \$40,000 out of the  
21 property; that the payments would be \$1800 per month, including taxes and insurance; that the  
22 interest rate would only go up once every year and that the payment would only go up by \$100  
23 for each of the first 5 years; and that the payments were interest only, but that Mr. Cuevas could  
24 send extra money each month that would go directly towards the principal amount.

25           24. In addition, Defendant Trevino informed Mr. Cuevas that his existing loan  
26 had a prepayment penalty of \$7,000, which expired in November of 2006. Mr. Cuevas responded  
27 by saying they should wait until after November to refinance so they wouldn't have to pay the  
28 penalty, but Defendant Trevino responded by saying (in Spanish): "Don't worry, you will be



1 saving so much money, your payment is lower, and the value of your house is increasing.”  
2 Defendant Trevino therefore assured Mr. Cuevas that it was worth it to refinance “now”, rather  
3 than waiting until November.

4 25. Mr. Cuevas relied on Defendant Trevino's representations regarding the terms  
5 of the proposed refinancing deal and agreed to refinance his home through Defendants.

6 26. On May 31, 2006, Mr. Cuevas signed the refinancing documentation.  
7 However, despite the fact that all of Mr. Cuevas' discussions with Defendant Trevino were in  
8 Spanish and, despite the fact that Mr. Cuevas speaks and reads almost no English whatsoever, all  
9 of the documents presented to Mr. Cuevas were in English. Defendant Trevino never explained  
10 any of the documents. Rather, Defendant Trevino – who had represented to Mr. Cuevas that she  
11 was acting on Mr. Cuevas' behalf – did not take the time to explain *any* of these documents, and  
12 rushed Mr. Cuevas through the stack of papers with repeated statements that all that Mr. Cuevas  
13 was required to do was to “sign the papers” and “not to worry about it.”

14 27. At one point, becoming confused and concerned, Mr. Cuevas asked again  
15 about specific details of the prepayment penalty on his existing loan. Defendant Trevino brushed  
16 off these questions from Mr. Cuevas and instead stated only that he was saving so much money  
17 and still lowering his monthly payment, that he shouldn't worry about it. Defendant Trevino  
18 never advised Mr. Cuevas of a number of salient facts regarding the true nature of the transaction,  
19 including:

- 20 a. that the loan was a negative amortized loan, meaning that the  
21 payments had not been set sufficiently high to pay off the interest as it  
22 accrued on the loan;  
23 b. that the amount “interest only” Mr. Cuevas needed to pay each  
24 month to prevent the principal from increasing was \$3,100 – nearly \$400  
25 *more* than the \$2755 monthly payment he was originally seeking to reduce;  
26 c. that Mr. Cuevas' monthly payment could increase *every month* after  
27 the inception of the loan, not just once per year;  
28 d. that the prepayment penalty on his existing loan was \$10,253, not

1 \$7,000; and

2 d. that the various Defendants would receive payments of more than  
3 \$14,000 in the form of improper financing charges, more than \$6,000 of  
4 which was paid by Mr. Cuevas through escrow, and \$8,740 paid by  
5 Defendant World Savings Bank outside escrow;.

6 28. Defendant Trevino's misrepresentations about the loan caused Mr. Cuevas to  
7 sign all the documents despite the fact that he was unable to read them, and without having them  
8 explained to him, thereby securing a mortgage and Deed of Trust with Defendant World Savings  
9 Bank on Plaintiff's home. At the time of execution, Mr. Cuevas was ignorant of the falsity of  
10 Defendants' representations and believed them to be true. In reliance on Defendants'  
11 representations, Plaintiff was induced to sign all the closing documents including a Deed of Trust  
12 and Defendant World Savings Bank's Adjustable Rate Pick-a-Payment Loan in the amount of  
13 \$437,000. Had the Plaintiff known of the actual facts, Plaintiff would not have signed said  
14 documents.

15 29. Defendants' representation that Mr. Cuevas would receive an interest only  
16 loan with payments of \$1800 per month, including taxes and insurance, and with the interest rate  
17 changing only once every year, were false. In reality, Defendants lured Mr. Cuevas into agreeing  
18 to pay a negative amortized loan with a variable interest rate, the terms of which also included  
19 that the outstanding principal balance would *increase* over the course of the loan to as much as  
20 \$546,250 because the regular periodic payments did not cover the full amount of interest due.  
21 Also, contrary to the Defendants' representations, the variable rate feature on the loan could adjust  
22 *each month* after the loan's inception.

23 30. Defendants knew that, due to the interest rate increase and Plaintiff's fixed  
24 gross monthly income of approximately \$3200 per month, Mr. Cuevas would not be able to  
25 afford the monthly payments. Upon information and belief, Defendants knowingly designed a  
26 transaction for Mr. Cuevas that did not take into account his ability to pay to induce a default and  
27 foreclose on their true prize, the home equity in Mr. Cuevas' house.

28 31. In addition, Mr. Cuevas was charged significant fees in connection with the

1 refinance that appear to have no discernible basis. Moreover, the majority of the fees were paid  
2 to Defendants Atlas, Silbernagel and Trevino.

3 32. On information and belief, Plaintiff alleges that on May 31, 2006, when  
4 escrow closed, Defendant World Savings Bank paid Defendant Atlas a kickback of \$8,740 for  
5 defrauding Mr. Cuevas into entering the loan.

6 33. On information and belief, Defendants purposefully defrauded Plaintiff and  
7 structured the loan with monthly payments they knew he could not afford. On information and  
8 belief, Defendants intended for Plaintiff to fall behind on his payments, at the risk of default, so  
9 he would return to Defendants in order to either refinance the loan again, resulting in more bogus  
10 origination fees for the Defendants as well as payment of the prepayment penalty to Defendants,  
11 or to default, leading to foreclosure.

12 34. As a direct result of Defendants' refinancing transaction, Mr. Cuevas now  
13 faces possible foreclosure and removal from his home of fifteen years.

14 35. In addition to the foregoing, after Mr. Cuevas signed the stack of documents  
15 on May 31, 2006, Defendant Trevino provided Mr. Cuevas only with an *unsigned* copy of the  
16 documents. Included among the unsigned documents were multiple copies, also *unsigned*, of the  
17 Notice of Right to Cancel required by the Federal Truth in Lending Act. In addition to being  
18 unsigned, the copies of the Notice of Right to Cancel erroneously identified the date of the  
19 transaction as June 2, 2006 and the expiration of the cancellation right as June 6, 2006.

20 36. The Notice of Right to Cancel documents actually signed by Mr. Cuevas on  
21 May 31, 2006 also erroneously identified the date of the transaction as June 2, 2006 and the  
22 expiration of the cancellation right as June 6, 2006. However, at some point after Mr. Cuevas  
23 signed the documents, Defendants made handwritten changes to the Notice of Right to Cancel  
24 document. Specifically, Defendants changed the date of the transaction from June 2, 2006 to  
25 May 31, 2006, and the expiration of the cancellation right from June 6, 2006 to June 3, 2006. In  
26 addition, Defendants *forged* the initials "JC" next to each of the handwritten changes, thus falsely  
27 making it appear as though Mr. Cuevas was given the proper notice required by the Truth in  
28 Lending Act.



37. Mr. Cuevas is informed and believes and thereon alleges that throughout all relevant times in this complaint, Defendant Trevino, who made the misrepresentations herein alleged, was a sales person and therefore the agent and employee of Defendants Silbernagel and Atlas and, in doing the things herein alleged was acting within the course and scope of such agency and employment and with the permission and consent of his co-Defendants.

38. Moreover, Mr. Cuevas is informed and believes and thereon alleges that the Defendant World Savings Bank conspired with co-Defendants to make such misrepresentations in order to induce Mr. Cuevas to enter into the ruinous transaction.

39. On information and belief, the Defendants knowingly and purposely conspired to defraud Mr. Cuevas to enter this transaction. The Defendants knew that Mr. Cuevas was susceptible to this type of transaction. The Defendants acted with recklessness, bad faith, oppression, fraud, or malice in committing the aforementioned acts of financial abuse in that they knew or should have known that Mr. Cuevas was unaware that the deal he entered satisfied none of his objectives given his inability to speak, read or write English.

**FIRST CAUSE OF ACTION**  
**(Violations of the Federal Truth In Lending Act; Federal Home Ownership & Equity Protections, Act, 15 U.S.C. § 1601. *et seq.* – against All Defendants)**

40. Mr. Cuevas hereby realleges and incorporates by reference the allegations of paragraphs 1 through 39 as though fully set forth herein.

41. At the time of subject transaction, one or more of the Defendants acted as creditors who regularly engaged in the making of mortgage loans, payable by agreement in installments or for which the payment of a finance charge is or may be required, whether in connection with loans, sales of property or services, or otherwise.

42. Accordingly, Defendants are subject to the Truth in Lending Act ("TILA") 15 U.S.C. § 1601 *et seq.*, and its implementing regulations, Federal Reserve Board Regulation Z, 12 C.F.R. § 226.

43. As a result of the subject transaction, Defendants acquired an interest in Mr. Cuevas' home that secures the payment or performance of an obligation.

1           44. Defendants provided Mr. Cuevas with *unsigned* copies of the Notice of Right  
2 to Cancel required by the Federal Truth in Lending Act, and the *unsigned* copies erroneously  
3 identified the date of the transaction as June 2, 2006 and the expiration of the cancellation right as  
4 June 6, 2006.

5           45. The Notice of Right to Cancel documents actually signed by Mr. Cuevas on  
6 May 31, 2006 also erroneously identified the date of the transaction as June 2, 2006 and the  
7 expiration of the cancellation right as June 6, 2006.

8           46. At some point after Mr. Cuevas signed the documents, Defendants made  
9 handwritten changes to the Notice of Right to Cancel document, changing the date of the  
10 transaction from June 2, 2006 to May 31, 2006, and the expiration of the cancellation right from  
11 June 6, 2006 to June 3, 2006.

12           47. Defendants also *forged* the initials "JC" next to each of the handwritten  
13 changes, thus falsely making it appear as though Mr. Cuevas was given the proper notice required  
14 by the Truth in Lending Act.

15           48. The Defendants failed to properly and accurately notify Plaintiff of his right  
16 to rescind the transaction, in violation of 15 U.S.C. § 1635(a) and 12 C.F.R. §§ 226.15(b) and  
17 226.23(b).

18           49. In accordance with the Federal Truth in Lending Act, Plaintiff is entitled to:

19           a.       Rescission of the loan held by Defendants pursuant to U.S.C. §§  
20 1635, 1641(d)(1) and 12 C.F.R. § 226.23;

21           b.       The return of any money or property that has been given to anyone  
22 in connection with the transaction and the termination of Defendants' security interest in the  
23 property;

24           c.       Actual damages in an amount to be determined at trial;

25           d.       Statutory damages as provided by 15 U.S.C. § 1640; and

26           e.       Costs and disbursements.  
27  
28

**SECOND CAUSE OF ACTION**

**(Violations of the Federal Real Estate Settlement Procedures Act, 12 U.S.C. Section 2601, *et seq.* – against all of the Defendants)**

50. Mr. Cuevas hereby realleges and incorporates by reference the allegations of paragraphs 1 through 39 as though fully set forth herein.

51. At the time of subject transaction, the Defendants acted as creditors who regularly engaged in the making of mortgage loans, payable by agreement in installments or for which the payment of a finance charge is or may be required, whether in connection with loans, sales of property or services, or otherwise.

52. On information and belief, the Defendants make or invest in residential real estate loans aggregating more than \$1,000,000 per year.

53. Accordingly, Defendants are subject to the Real Estate Settlement Procedures Act ("RESPA"), 12 U.S.C. § 2601 *et seq.*

54. The Defendants have violated numerous provisions of RESPA, including:

a. Assessing fees and kickbacks pursuant to an agreement or understanding, oral or otherwise, that business incident to or a part of a real estate settlement service involving the mortgage on Plaintiff's home should be referred to any person in violation of 12 U.S.C. § 2607(a);

b. Accepting any portion, split, or percentage of any charge made or received for the rendering of a real estate settlement service in connection with a transaction involving the mortgage on Plaintiff's home other than for services actually performed in violation of 12 U.S.C. § 2607(b).

55. On information and belief, all such violations of RESPA were made by the Defendants with intentional disregard of the statutory requirements.

56. On information and belief, all such violations of RESPA were made by the Defendants as part of a pattern or practice of noncompliance with the statute.

57. In accordance with RESPA, the Defendants are liable for:

- a. Actual damages in an amount to be determined at trial;
- b. Attorneys' costs and fees;

- 1 c. Statutory damage as provided by 12 U.S.C. §§ 2605, 2607.  
2 and 2609; and  
3 d. Costs and disbursements.

4 **THIRD CAUSE OF ACTION**  
5 **(Violation of California Civil Code § 1632 – Against All Defendants)**

6 58. Mr. Cuevas hereby realleges and incorporates by reference the allegations of  
7 paragraphs 1 through 39 as though fully set forth herein.

8 59. Defendants failed to provide any disclosures in Spanish, despite the fact that  
9 the loans were negotiated in Spanish, in violation of Civil Code § 1632(c).

10 60. Pursuant to subdivision (k) of California Civil Code § 1632, Defendants must  
11 allow Mr. Cuevas to rescind the loan.

12 61. Pursuant to California Civil Code § 1691 (b), this Complaint serves as notice  
13 of rescission.

14 62. Mr. Cuevas is entitled to rescind the loan and equitable restitution.

15 **FOURTH CAUSE OF ACTION**

16 **(Fraud - Against Defendants Atlas, Trevino and Silbernagel.)**

17 63. Mr. Cuevas hereby realleges and incorporates by reference the allegations of  
18 paragraphs 1 through 39 as though fully set forth herein.

19 64. Defendants Trevino, Silbernagel and Atlas fraudulently and knowingly  
20 induced Mr. Cuevas to enter into the May 31, 2006 mortgage transaction by making intentional  
21 misrepresentations, failing to provide material information and/or deliberately concealing  
22 material information. As more fully alleged above, Defendant Trevino, for her own benefit on  
23 behalf of Defendants Silbernagel and Atlas, knowingly and purposely deceived Mr. Cuevas and  
24 induced him to enter into a ruinous transaction that she knew Mr. Cuevas could not repay.

25 65. Further, Defendant Trevino made numerous misrepresentations to induce Mr.  
26 Cuevas to enter this transaction, including the assurance that Mr. Cuevas would be getting an  
27 additional \$40,000 out of the property; that the payments would be \$1800 per month, including  
28

1 taxes and insurance; that the interest rate would only go up once every year and that the payment  
 2 would only go up by \$100 for each of the first 5 years; and that the payments were interest only,  
 3 but that Mr. Cuevas could send extra money each month that would go directly towards the  
 4 principal amount.

5 66. Mr. Cuevas has incurred and continues to incur substantial damages as a  
 6 direct and proximate result of his justifiable reliance into entering into a transaction with  
 7 Defendants based on Defendants' intentional misrepresentations, omissions and/or concealments.

8 67. Defendants' actions were willful, intentional, and knowing, rendering the  
 9 May 31, 2006, mortgage and deed of trust null and void.

#### 10 **FIFTH CAUSE OF ACTION**

##### 11 **(Breach of Fiduciary Duty – Against Defendants Atlas, Trevino and Silbernagel)**

12 68. Mr. Cuevas hereby realleges and incorporates by reference the allegations of  
 13 paragraphs 1 through 39 as though fully set forth herein.

14 69. Defendant Trevino held herself and Defendants Silbernagel and Atlas out to  
 15 be a disinterested "full service" mortgage broker not affiliated with any one mortgage lender in  
 16 her solicitation through her own verbal representations. Mr. Cuevas justifiably relied on the  
 17 representations in becoming Defendants' client.

18 70. Under California law both consultants and mortgage brokers owe their clients  
 19 a fiduciary duty.

20 71. In making material misrepresentations and/or omissions in inducing Mr.  
 21 Cuevas to enter an entirely unfair and one-sided transaction, Defendants Trevino, Silbernagel and  
 22 Atlas breached their fiduciary duty.

23 72. This breach of fiduciary duty was the actual and proximate cause of all of Mr.  
 24 Cuevas' damages arising from this transaction.

#### 25 **SIXTH CAUSE OF ACTION**

##### 26 **(Unfair Competition – Against all of the Defendants)**

27 73. Mr. Cuevas hereby realleges and incorporates by reference the allegations of  
 28 paragraphs 1 through 39 as though fully set forth herein.

74. The Defendants' acts and omissions as alleged above constitute unlawful,



1 unfair, and fraudulent business practices within the meaning of the Business & Professions Code  
2 § 17200.

3 75. Defendants' unfair, unlawful and fraudulent acts were oppressive.

4 76. As a result of these acts of unfair, unlawful and fraudulent business practices,  
5 the defrauding Defendants have been unjustly enriched at Mr. Cuevas' expense in an amount not  
6 yet ascertained. Accordingly, Mr. Cuevas is entitled to an accounting, restitution and/or  
7 disgorgement from Defendants in an amount to be determined in accordance with the proof at  
8 trial.

9 **SEVENTH CAUSE OF ACTION**  
10 **(Intentional Infliction of Emotional Distress - Against all of the Defendants)**

11 77. Mr. Cuevas hereby realleges and incorporates by reference the allegations of  
12 paragraphs 1 through 39 as though fully set forth herein.

13 78. Defendants acted intentionally in taking advantage of Mr. Cuevas, defrauding  
14 him into entering into a mortgage and deed of trust knowing that he could not make payments and  
15 subjecting him to foreclosure.

16 79. Defendants' unfair, unlawful and fraudulent conduct was extreme and  
17 outrageous and done with malice and reckless disregard of the likelihood of causing Mr. Cuevas  
18 emotional distress. As a proximate result of the aforementioned outrageous acts, Mr. Cuevas has  
19 suffered, and continues to suffer, extreme and severe emotional distress.

20 **EIGHTH CAUSE OF ACTION**  
21 **(Negligence - Against All Defendants)**

22 80. Mr. Cuevas hereby realleges and incorporates by reference the allegations of  
23 paragraphs 1 through 39 as though fully set forth herein.

24 81. Each Defendant owed a duty of care to Mr. Cuevas to exercise reasonable  
25 care with respect to the solicitation, negotiation, processing and finalization of the Loan  
26 Agreement. Atlas Realty/Financial Services, Samantha Trevino, and Alvin Silbernagel further  
27 owed a special duty of care as specialists with respect to mortgage brokering services. Among  
28 other things, Defendants owed a duty to comply with all statutory requirements, including, but  
not limited to, TIL and RESPA. Defendants breached their duties of care to Mr. Cuevas and

1 failed to exercise reasonable care and skill in performing their mortgage brokering and lending  
 2 services by failing to, among other things, thoroughly explain the terms of the refinance  
 3 transaction and Loan Agreement, ensure that Mr. Cuevas understood the terms of the refinance  
 4 transaction and Loan Agreement, disclose the total and true character of the fees that would be  
 5 charged to Mr. Cuevas, submit truthful financial information, evaluate and confirm the  
 6 accuracy of such financial information, and by providing Mr. Cuevas with unsigned,  
 7 inaccurate copies of the Right to Cancel Notice at closing.

8 75. Mr. Cuevas is informed and believes, and on that basis alleges, that as a  
 9 direct and proximate result of Defendants' negligence alleged herein, Mr. Cuevas entered into  
 10 a loan, the terms of which were undisclosed and which contained fees that were not disclosed,  
 11 and in doing so repaid an existing loan that contained prepayment penalty clauses, and has  
 12 suffered and will continue to suffer damages in an amount to be proven at trial.

13 **PRAYER FOR RELIEF:**

14 **WHEREFORE**, Plaintiff makes the following demand:

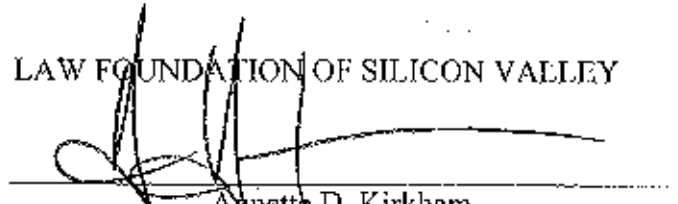
- 15 1. For cancellation of the Deed of Trust and any and all mortgage documents  
 16 dated May 31, 2006;
- 17 2. For rescission of the Deed of Trust and any and all mortgage documents  
 18 dated May 31, 2006 and any and all agreements or contracts that made up the  
 19 fraudulent transaction at issue;
- 20 3. For an accounting, restitution and/or disgorgement from Defendants;
- 21 4. For restitution of all money and things received by the Defendants from  
 22 Plaintiff;
- 23 5. For compensatory damages according to proof;
- 24 6. For general damages;
- 25 7. For special damages;
- 26 8. For punitive damages in an amount sufficient to punish the Defendants and  
 27 to deter the Defendants from engaging in similar conduct at issue;
- 28 9. For statutory damages pursuant to the TILA and RESPA;

10. For costs and reasonable attorneys' fees;
11. For prejudgment interest;
12. For such other relief as the Court deems proper.

Respectfully submitted,

Dated: May 30, 2007

LAW FOUNDATION OF SILICON VALLEY



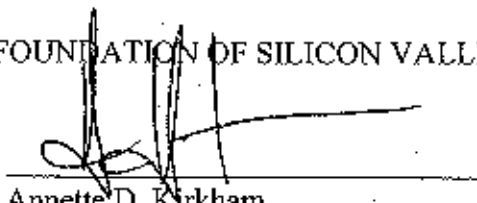
Annette D. Kirkham  
Attorneys for Plaintiff  
JUAN CUEVAS

**JURY DEMAND**

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff hereby requests a trial by jury as to each and every claim for which he is so entitled.

Dated: May 30, 2007

LAW FOUNDATION OF SILICON VALLEY



Annette D. Kirkham  
Attorney for Plaintiff  
JUAN CUEVAS